IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

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WRIT PETITION Nos. 815 of 2005 and 2626 of 2005

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WRIT PETITION NO : 815 of 2005

Between:

T. Krishna Murthy S/o Narayana Murthy, aged 52 years,

Junior Assistant, Office of Executive Engineer, Special Construction Division, Srikakulam.

..... PETITIONER

AND

1. The Engineer-in-Chief, I & CAD(Admn. Wing) Andhra

Pradesh, Erramanzil, Hyderabad.

2. The Superintending Engineer, I & CAD Vamsadhara Project

Circle, Srikakulam.

3. The Superintending Engineer, I & CAD Irrigation Circle,

Bobbili, Vizianagaram District.

4. Sri R. Bhaskar Rao, Sr. Assistant C/o Engineer-in-Chief, I &

CAD Erramanzil, Hyderabad.

5. G. Ramana Murthy, Sr. Assistant C/o Engineer-in-Chief, I &

CAD Erramanzil, Hyderabad.

6. Sri G. Ramakrishna Rao, Jr. Asst. O/o Executive Engineer,

Irrigation Division, Srikakulam.

....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the Orders passed by the Andhra Pradesh Administrative Tribunal in O.A. No. 7714 of 1996, dated: 27.12.2003 directing the official respondents to give promotion to 6th respondent as Senior Assistant taking his regularization of services as 12.2.1980 with notional benefits as arbitrary and illegal and set aside the same.

Counsel for the Petitioner: Mr. S. Satyam Reddy.

Counsel for the Respondents No.1 to 3 : G.P. for Services – II

Counsel for the Respondents No.4 to 6 : Mr. P. Ramabrahmam.

WRIT PETITION NO : 2626 of 2005

Between:

1. The Engineer-in-Chief, I & CAD Department, Administration

Wing, Andhra Pradesh, Hyderabad.

2. Superintending Engineer, Vamsadhara Project Circle,

Srikakulam.

3. Superintending Engineer, Irrigation Circle, Bobbili.

..... PETITIONERS

AND

Sri G. Rama Krishna Rao, Jr. Asst. O/o the Executive

Engineer, Irrigation Division, Srikakulam.

....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ, Order or direction more particularly one in the nature of writ of Certiorari and calling for the records relating to the Order passed in O.A.No. 7714 of 1996 filed in the Andhra Pradesh Administrative Tribunal, Hyderabad and quash the same as illegal, arbitrary.

Counsel for the Petitioner: G.P. for Services-II

Counsel for the Respondent: Mr. P. Ramabrahmam.

The Court at the admission stage made the following :

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COMMON JUDGMENT:

(per G. Bikshapathy J)

1. The Writ Petition No. 2626 of 2005 is filed by the Government assailing the Order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.NO. 7741 of 1996, dated: 27 12.2004. W.P.No. 815 of 2005 was filed by one Mr. T. Krishna Murthy after obtaining leave of this Court challenging the Order passed in the above O.A.

2. Respondent in W.P.No. 2626 of 2005 is the applicant before the tribunal. He filed O.A.NO. 7741 of 1996 seeking review of the promotions made in proceedings No. 294 M/86, dated: 27.5.1986 of the Administrator, Vamsadhara Project, Stage I, CADA, Srikakulam and to promote the applicant as Senior Assistant notionally from the date of his juniors were promoted and fixing his rank as 3rd candidate with all consequential benefits.

3. Certain essential facts leading to the filing of the O.A. referred to herein. We are referring to the parties as arrayed in W.P.No. 2626 of 2005. Respondent was initially appointed as Junior Assistant during February, 1980 in Vamshadhara Project Circle. However, the said division was closed and consequently he became surplus with effect from 31.5.1988. He was surrendered to the Engineer-in-Chief for necessary posting. Therefore, after considering his case, he was given reposting as Junior Assistant at CADA Unit, Vamshadhara Project, Srikakulam by proceedings of the Engineer-in-Chief dated: 10.7.1985. It was also mentioned in the said communication that he shall take last rank in the unit in which he was posted. After the respondent was transferred, certain promotions took place in the post of Senior Assistant on17.5.1986. The case of the respondent was not considered as his request for regularisation of service was yet to be finalised in his parent circle. However, the Superintendent Engineer, Srikakulam in proceedings dated: 5.7.1988 regularised the services with effect from 12.2.1982. But, however, by the date, there were some more changes in the administrative set up of CADA unit to which the respondent was transferred. The said unit was closed and he was surrendered in

Engineer-in-Chief, who in turn again posted him to the office of the Irrigation Circle, Bobili with a condition that he shall take last rank below Probationer/Approved Probationer as the case may be. Accordingly, he joined the service in Bobbili on 16.7.1988. After a lapse of 10 years, the respondent filed O.A.NO. 7714 of 1996 challenging the Order issued by the Srikakulam unit promoting some of the employees as Senior Assistants in CADA Unit. The said O.A. came to be disposed on 27.12.2004 with a direction that the case of the respondent should also be considered notionally against which the present Writ Petition has been filed by the Engineer-in-Chief as well as other petitioner in W.P.No. 815 of 2005.

4. The learned Government Pleader, however, submits that the Order of the tribunal is wholly illegal and contrary to law. The tribunal ought to have dismissed the O.A. on the ground of laches in asmuch as alleged juniors were promoted in the year 1986 and dispute was raised in the year 1996. Even when his regularisation was finalised with effect from 12.2.1982 he ought to have approached the Court within a reasonable time. But, he approached the Court after a long lapse of time by which time the CADA unit was closed and he was accommodated in Superintending Engineer, Circle Bobbili in which establishment he was required to take last rank in the category of probationer/approved probationer. He also submits that each circle in irrigation department is unit by itself and therefore, all the three places, where he worked were independent units and therefore, the question of agitating his right when he was in Bobbili unit for his promotion in CADA is absolutely misconceived and therefore, the tribunal ought to have dismissed the O.A.

5. The learned counsel for the respondent-employee submits that since the regularisation of the petitioner was not finalised and it was finalised only by communication dated: 5.7.1988 regularising the services in Srikakulam, where he was appointed initially with effect from 12.2.1982 and therefore, the said seniority ought to have been given to him in Vamshadara C.A.D.A. and he submits that admittedly some of the juniors, who were promoted in CADA, Srikakulam in the

cadre of Junior Assistant were promoted as Senior Assistants and therefore, the Order of the tribunal is quite legal and valid.

6. We have heard the learned counsel for the parties.

7. The tribunal after considering the matter issued the following directions:

> **"On a careful consideration of the submissions made, when similarly situated persons, who are placed in the seniority list below the Applicant were given promotion as Senior Assistants in the year 1986, the Applicant's case was not considered for the purpose of regularisation of services of the Applicant. On account of lapses on the part of the Official Respondents, the services of the Applicant were not regularised, but not on account of the lapses of the Applicant. Now that the services of the Applicant were regularised in the cadre of Junior Assistant with effect from 12.2.1980 and his probation also declared with effect from 12.2.1982 by proceedings dated: 5.7.1988 of the Superintending Engineer, Vamshadara Project Circle, Srikakulam, he should be given promotion as Senior Assistant over and above his juniors by fixing his seniority taking into consideration the date of regularisation of his services in the cadre of Junior Assistant i.e. 12.2.1980. Notional benefits should be given prior to the filing of the O.A. and monetary benefits should be given subsequent thereto basing upon his seniority now ordered to be fixed. Necessary Orders should be passed within a period of three months from the date of receipt of this Order."**

8. The issue that arises for consideration is whether the respondent can be allowed to agitate the promotion in a defunct unit and that too after a lapse of 10 years?

9. Admittedly, the respondent was declared as surplus in Srikakulam in the cadre of Junior Assistant in Vamshadara project and therefore, he was surrendered to Engineer-in-Chief and he was again reposted to CADA with a condition that he shall take last rank. Even this unit was also closed. Thereafter, Engineer-in-Chief again reposted the respondent to Bobbili Irrigation circle. When his services were regularised in 1988 with effect from 12.2.1982, he should not have kept quite for

more than one decade and that too when the entire unit was disbanded and all the employees working in the said unit were reposted to various independent circles. Under these circumstances, the question of promotion of the persons in the disbanded unit would not arise. More over, there was a specific condition in the posting Order that he shall take last rank in the respective category. The contention of the respondent is that he ought to have been promoted as Senior Assistant in CADA unit basing on his regularisation with effect from 12.2.1982 also cannot be accepted. Even assuming that his services were regularised as Juniro Assistant with effect from 12.2.1982 in his parent unit and when once he is transferred having became surplus, he has take last rank in the category of Junior Assistant in CADA. But, when once the CADA is closed, again he had to take last rank under the probationer/approved probationer category in Bobbili. Therefore, we find that the tribunal ought to have rejected for clear laches and belated approach to the tribunal. Further also, CADA unit itself was disbanded. The question of claiming promotion at this stage would not arise. Thirdly also, we find that he was transferred from CADA, Srikakulam to Bobbili. It was also mentioned in the Orders that he shall take last rank below the probationer/approved probationer. Therefore, he was rightly provided with the seniority in Bobbili circle. Under those circumstances, we are of the opinion that the Order of the tribunal is not sustainable in law and accordingly it is set aside and the O.A. stands dismissed.

10. Accordingly, the Writ Petition No. 2626 of 2005 and W.P.No. 815 of 2005 are allowed. No costs.

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G.BIKSHAPATHY, J

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P.S. NARAYANA, J

2-3-2005

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(FOR HIS LORDSHIP'S KIND PERUSAL)

One fair copy to Hon'ble Sri Justice P.S. Narayana (for His Lordship's kind perusal)

To

1. The Engineer-in-Chief, I & CAD(Admn. Wing) Andhra

Pradesh, Erramanzil, Hyderabad.

2. The Superintending Engineer, I & CAD Vamsadhara Project

Circle, Srikakulam.

3. The Superintending Engineer, I & CAD Irrigation Circle,

Bobbili, Vizianagaram District.

4. 2 CCs to Govt. Pleader for Services-II, High Court Buildings, Hyderabad.

5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

6. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

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